

SPECIAL ORDINANCE NO. 8-52-95

AN ORDINANCE certifying and approving the need for the services of a consultant to provide professional engineering services to develop, implement, and manage a Combined Sewer Overflow Program.

WHEREAS, the City of Fort Wayne through its Board of Public Works desires to hire a consultant for professional engineering services to develop, implement, and manage a Combined Sewer Overflow Program; and

WHEREAS, the City of Fort Wayne does not have the capability of performing this work with in-house forces; and

WHEREAS, the Board of Public Works believes that there is a need to employ a consultant to perform this service;

WHEREAS, it is anticipated that the amount to be paid to said consultant, on an annual basis, will be in excess of \$100,000.00

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. The Common Council of the City of Fort Wayne hereby certifies and approves the need for the services of a consultant to provide professional engineering services to develop, implement, and manage a Combined Sewer Overflow Program

SECTION 2. This Ordinance shall be in full force and effect from and after its passage any and all necessary approval by the Mayor.


Councilmember

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Henry,
seconded by James, and duly adopted, read the second time by
title and referred to the Committee on James (and the
City Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Common Council Conference Room 128, City County
Building, Fort Wayne, Indiana, on _____, the _____ day
of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 3-28-95.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry,
seconded by _____, and duly adopted, placed on its passage.
PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY	<u>✓</u>			
EDMONDS				<u>✓</u>
GIAQUINTA				<u>✓</u>
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 8-22-95.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 2-52-95
on the 22nd day of August, 1995.

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Don J. Schmitter
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 23rd day of August, 1995,
at the hour of 11:00 o'clock A. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 24th day of Aug,
1995, at the hour of 8:15 o'clock P. A.M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

BILL NO. S-95-03-18

REPORT OF THE COMMITTEE ON
FINANCE
THOMAS C. HENRY - CHAIR
MARK E. GIAQUINTA - VICE CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) certifying and approving
the need for the services of a consultant to provide professional engineering
services to develop, implement, and manage a Combined Sewer Overflow
Program

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)XX

DO PASS

DO NOT PASS

ABSTAIN

NO REC.

DATED: 8-22-95

Sandra E. Kennedy
City Clerk

Tom Henry made a
motion to bring Bill

No. S-95-03-18 of the
title - Then the bill
was recommitted and placed
in the Finance Committee for
discussion on Aug. 15-1982

PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME ("PROJECT"):

Combined Sewer Overflow Abatement Program
Program Management, Development, and Implementation

This agreement is by and between

PROJECT OWNER ("CITY"):

Fort Wayne Water Pollution Control Utility
by and through it's Mayor and
Board of Public Works
One Main Street, Room 700
Fort Wayne, Indiana 46802

and,

PROJECT ENGINEER ("ENGINEER"):

RUST Environment and Infrastructure
151 N. Delaware Street, Suite 1400
Indianapolis, Indiana 46204

Who agree as follows:

CITY hereby engages ENGINEER to perform the services set forth in Part I. ENGINEER agrees to perform such services for the compensation set forth in Part III. The ENGINEER shall be authorized to commence the services set forth in Part I upon execution of this agreement and receipt of written authorization to proceed from the CITY. CITY and ENGINEER agree that these signature pages, together with Parts I - IV, Pages 1 through 13 are attached, constitute the entire agreement between them relating to the PROJECT, and that no oral representations are relied upon by either party to this agreement regarding this PROJECT.

APPROVALS

APPROVED FOR CITY:

CITY OF FORT WAYNE, INDIANA, INC.

BY:

Paul Helmke
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS

BY:

Linda Buskirk
Linda Buskirk, Chairman

BY:

C. James Owen
C. James Owen, Member

BY:

Terrance P. McCaffrey
Terrance P. McCaffrey, Member

ATTEST:

Patricia J. Crick
Patricia Crick, Clerk

DATE:

3/22/95

APPROVED as to form and legality:

BY:

Associate City Attorney

DATE:

APPROVED FOR ENGINEER:

BY:

Dale R. Tekippe
Dale R. Tekippe

TITLE:

Vice President

DATE:

PART I
ENGINEER'S RESPONSIBILITIES

A. PROJECT DESCRIPTION

This project involves providing program management, development, and implementation services for the Combined Sewer Overflow Abatement Program in the City of Fort Wayne, Indiana. The project will include providing assistance to the CITY during the planning, design and construction of a comprehensive, community-wide combined sewer overflow abatement program. This program has been divided into three phases, Phase I - Program Definition, Phase II - Plan Preparation, and Phase III - Long-Term Implementation. Scope of services, schedule and compensation has been defined herein for Phase I - Program Definition only. A preliminary schedule has been provided for Phase II - Plan Preparation. It is anticipated that Phase I will provide details for Phase II work which can then be added to the original contract by amendment. Phase III - Long-Term Implementation will be addressed upon completion of Phase II.

B. SCOPE OF SERVICES

PHASE I - PROGRAM DEFINITION

TASK 100 *EPA Administrative Order*

This work task will include meeting with CITY staff to strategize responses to the EPA Administrative Order Docket N^o V-W-95-AO-09, meeting with EPA to clarify details and intent of the order, assisting the CITY in preparing the initial response to the order, and follow up meetings/presentations to EPA or IDEM to negotiate/clarify the CITY's intent in responding to the EPA Administrative Order.

- 101 Meet with key CITY staff to review and discuss specific items contained in the EPA Administrative Order. Assist CITY staff in development of discussion strategy in preparation for a meeting with EPA to clarify details and intent of the order.
- 102 Accompany CITY staff to a meeting with EPA Region 5 in their Chicago offices to discuss and clarify the Administrative Order.
- 103 Meet with CITY staff to review EPA comments, discuss short and long-term strategy, and receive direction regarding assistance in preparation of the initial CITY response.

- 104 Prepare a draft response for review and comment by the CITY. The draft response should address CITY concerns regarding the EPA "Findings" and should present a proposed response to each item in the "Order" portion of the Administrative Order.
- 105 Meet with CITY staff to receive and review comments and concerns regarding the draft response.
- 106 Prepare the final version of this initial response by the CITY to the EPA Administrative Order and forward to the CITY for official transmittal to US EPA Region 5.
- 107 Assist the CITY in preparation for and presentation at up to three additional meetings with EPA and/or IDEM directly related to the content of this initial response or clarification thereof.
- 108 Prepare written meeting summaries documenting discussions and decisions at the above reference meetings.

TASK 200 *CSO Task Force and Citizens Advisory Board*

This work task will include serving as facilitator for CSO Task Force and Citizens Advisory Board meetings regarding development of objectives, policies and standards for the CSO Abatement Program. It is anticipated that the CSO Task Force will consist primarily of key CITY staff and will provide direction in the development of draft objectives, policies, and standards for the implementation of the CSO Abatement Program. The Citizens Advisory Board will represent various citizen interest groups and will provide initial public input to draft objectives, policies and standards.

- 201 Develop a schedule of CSO Task Force and Citizens Advisory Board meetings for April 1995 through March 1996. It is anticipated that the Task Force will meet monthly and the Advisory Board quarterly.
- 202 Prepare meeting agendas and summaries and facilitate discussions at the meetings.
- 203 Prepare initial draft objectives, policies, and standards for presentation and discussion at the CSO Task Force meetings.

- 204 Present draft objectives, policies, and standards to the CSO Task Force including rational for their development. Facilitate discussion of these items and take input regarding comments and concerns. (It is anticipated that an overall outline of desired objectives, policies, and standards will be developed at early meetings and specific elements will then be developed sequentially during subsequent meetings.)
- 205 Present draft objectives, policies, and standards to the Utility Director and/or Board of Public Works. (It is anticipated these presentations will occur periodically during the year.)
- 206 Present draft objectives, policies, and standards to the Citizens Advisory Board and receive comment and concerns.
- 207 Finalize recommended objectives, policies, and standards regarding the CSO Abatement Program for consideration by CITY policy making authorities.

TASK 300 *CSO Operational Plan Definition*

This task will include defining the content, schedule and budget for development of the CSO Operational Plan.

- 301 Obtain and review current CSO Operational Plan guidance documents from US EPA and IDEM.
- 302 Obtain and review work completed to date by CITY staff which relates directly to the CSO Operational Plan.
- 303 Prepare a draft outline of the CSO Operational Plan. This outline should address as a minimum the requirements of the Final Indiana State Combined Sewer Overflow Strategy, July 1991, and include chapters addressing:
1. plan overview;
 2. system inventory;
 3. administrative controls;
 4. maintenance and inspection programs;
 5. control strategy.

- 304 Prepare a scope of work, schedule, and budget for completion of the CSO Operational Plan. The schedule should include phased submittal of draft chapters of the plan.

TASK 400 *Nine Minimum Controls Plan Definition*

This task will include defining the content, schedule and budget for development of the Nine Minimum Controls Plan.

- 401 Obtain and review current Nine Minimum Controls Plan guidance documents from US EPA and IDEM.
- 402 Obtain and review work completed to date by CITY staff which relates directly to the Nine Minimum Controls Plan.
- 403 Prepare a draft outline of the Nine Minimum Controls Plan. This outline should address as a minimum the requirements of the Combined Sewer Overflow (CSO) Control Policy, April 1994, and the following nine minimum controls listed therein:
1. proper operation and regular maintenance programs for the sewer system and the CSOs;
 2. maximum use of the collection system for storage;
 3. review and modification of pretreatment requirements to assure CSO impacts are minimized;
 4. maximization of flow to the POTW for treatment;
 5. prohibition of CSOs during dry weather;
 6. control of solid and floatable materials in CSOs;
 7. pollution prevention;
 8. public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts;
 9. monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.
- 404 Prepare a scope of work, schedule, and budget for completion of the Nine Minimum Controls Plan. The schedule should include phased submittal of draft chapters of the plan.

TASK 500 *Long-Term CSO Control Plan Definition*

This task will include defining the content, schedule and budget for development of the Long-Term CSO Control Plan.

- 501 Obtain and review current Long-Term Control Plan guidance documents from US EPA and IDEM.
- 502 Obtain and review work completed to date by CITY staff which relates directly to the Long-Term CSO Control Plan.
- 503 Prepare a draft outline of the Long-Term CSO Control Plan. This plan should consider the site-specific nature of CSOs and evaluate the cost effectiveness of a range of control options/strategies. The plan should also include project implementation schedules and a financing plan to design and construct long-term control measures. The minimum elements of the Long-Term CSO Control Plan include:
 - 1. characterization, monitoring and modeling of the combined sewer system;
 - 2. public participation;
 - 3. consideration of sensitive areas;
 - 4. evaluation of alternatives;
 - 5. cost/performance consideration;
 - 6. operational plan;
 - 7. maximizing treatment at the existing POTW treatment plant;
 - 8. implementation schedule;
 - 9. post-construction compliance monitoring program.
- 504 Meet with IDEM and/or EPA to review and obtain input regarding the proposed plan content and schedule.
- 505 Prepare a scope of work, schedule, and budget for completion of the Long-Term CSO Control Plan. The schedule should include phased submittal of draft chapters of the plan.

PHASE II - PLAN PREPARATION

- TASK 600** *CSO Operational Plan*
(to be developed upon completion of Task 300 above)

TASK 700 *Nine Minimum Controls Plan*
(to be developed upon completion of Task 400 above)

TASK 800 *Long-Term CSO Control Plan*
(to be developed upon completion of Task 500 above)

PHASE III - LONG-TERM IMPLEMENTATION
(to be developed upon completion of Task 800 above)

C. SCHEDULE

PHASE I - PROGRAM DEFINITION

TASK 100 *EPA Administrative Order*

Start Date - Immediately
Initial Response Letter -
 Draft to CITY by March 20, 1995
 Final to CITY by March 24, 1995
Follow up meetings with EPA/IDEM - As Needed

TASK 200 *CSO Task Force and Citizens Advisory Board*

Start Date - Upon receipt of Notice-to-Proceed
 (estimated March 20, 1995)
Completion Date - April 30, 1996

TASK 300 *CSO Operational Plan Definition*

Start Date - Upon receipt of Notice-to-Proceed
 (estimated April 1, 1995)
Completion Date - 60 days after Notice-to-Proceed

TASK 400 *Nine Minimum Controls Plan Definition*

Start Date - Upon receipt of Notice-to-Proceed
 (estimated March 20, 1995)
Completion Date - 180 days after Notice-to-Proceed
 (estimated September 1, 1995)

TASK 500 *Long-Term Control Plan Definition*

Start Date - Upon Receipt of Notice-to-Proceed
(estimated April 1, 1995)

Completion Date - 240 Days after Notice-to-Proceed
(estimated November 1, 1995)

PHASE II - PLAN PREPARATION

TASK 600 *CSO Operational Plan*

Start Date - Upon receipt of Notice-to-Proceed
(estimated May 15, 1995)

Completion Date - April 1, 1996

TASK 700 *Nine Minimum Controls Plan*

Start Date - Upon receipt of Notice-to-Proceed
(estimated September 1, 1995)

Completion Date - January 1, 1997

TASK 800 *Long-Term CSO Control Plan*

Start Date - Upon receipt of Notice-to-Proceed
(estimated Early 1996)

Completion Date - Two years after NPDES Permit Issuance
(estimated completion date is Fall, 1997)

PART II

CITY RESPONSIBILITIES

CITY, at its expense, shall do the following in a timely manner so as not to delay the services of the ENGINEER.

A. INFORMATION/REPORTS

CITY will assist and make accessible all mapping reports, drawings records, tests and other information maintained by CITY pertinent to this project, all of which ENGINEER may rely upon without independent verification in performing service under the Agreement.

B. CITY REPRESENTATIVE

CITY representative for this PROJECT shall be Fort Wayne's Assistant Chief Engineer/Sanitary who shall have the authority to transmit instructions, receive information, interpret and define CITY policies and make decisions with respect to ENGINEER's services under this Agreement.

C. PERMIT FEES, LICENSE FEES, COPYRIGHTS

The CITY shall be responsible for payment of all permit fees and license or copyright fees for proprietary documents approved by the CITY for use by the ENGINEER in conjunction with this project.

PART III

COMPENSATION, BILLING AND PAYMENT

A. COMPENSATION

Compensation for all services set forth under PART I will be on a direct labor rate times a multiplier plus reimbursable expenses basis. Direct labor will be billed at the actual hourly rate of the staff member charging against this project at the time the charges are incurred. The multiplier will be 3.0 which included payroll burdens, overhead and profit. Reimbursable expenses will be charged in accordance with the ENGINEER's 1995 Schedule of Other Direct Charges. A copy of the ENGINEER's 1995 Schedule of Direct Labor Charges and 1995 Schedule of Other Direct Charges will be provided upon request. The maximum total compensation is as follows:

Description	Amount
PHASE I - PROGRAM DEFINITION	
Task 100 EPA Administrative Order	\$22,290
Task 200 CSO Task Force and Citizens Advisory Board	34,420
Task 300 CSO Operational Plan Definition	11,280
Task 400 Nine Minimum Controls Plan Definition	9,800
Task 500 Long-Term CSO Control Plan Definition	<u>17,760</u>
PHASE I Estimated Maximum	\$95,550

B. BILLING AND PAYMENT

1. Timing/format/Acceptance

The ENGINEER will bill the CITY monthly. Net payment shall be due from CITY within 45 days of receipt of ENGINEER's invoice. The monthly billing will consist of a calculation of the net current amount of the total compensation set out herein based on work during the billing period. Unless CITY provides ENGINEER with a written statement of any objections to a monthly invoice within 15 days of receipt, CITY shall be deemed to accept the invoice as submitted.

2. Delay/Adjustment

The total compensation set out herein will be firm if authorization to proceed with this

PROJECT is effective by May 1, 1995. Said authorization shall be in writing, executed by CITY representative. In the event commencement is delayed beyond such date by factors beyond ENGINEER's control, compensation shall be renegotiated. If the parties cannot, in good faith, negotiate a new fair compensation cost, either party shall have the right to terminate this Agreement by written notice to the other party.

PART IV STANDARD TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and ENGINEER can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by CITY are specifically objected to.

2. **CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by CITY. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. ENGINEER will promptly provide CITY with an amendment to this Agreement to recognize such change, which shall be deemed approved if not objected to within 15 days of receipt by CITY.

3. **SAFETY.** ENGINEER has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. **DELAYS.** If events beyond the control of CITY or ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay.

In the event ENGINEER is delayed by CITY and such delay exceeds 30 days, ENGINEER shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including CITY's obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CITY only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.

7. **RELATIONSHIP WITH CONTRACTORS.** ENGINEER shall serve as CITY's professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY's contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY's contractors.

8. **CONSTRUCTION REVIEW.** For projects involving construction, CITY acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. CITY agrees to hold ENGINEER harmless from any claims resulting from performance of construction-related services by persons other than ENGINEER.

9. **INSURANCE.** ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and ENGINEER's business requirements. Certificates evidencing such coverage will be provided to CITY upon execution of contract. For projects involving construction, CITY agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER's coverages referenced above shall, in such case, be excess over contractor's primary coverage.

10. **INDEMNITIES.** To the fullest extent permitted by law, ENGINEER shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of ENGINEER, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless ENGINEER, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses, alleged to be caused by any of the following if such is reasonably considered to be within the control of CITY and the loss, injury, or damage is attributable to CITY's negligence or willful misconduct: (a) any substance, condition, element, or material or any combination of the foregoing (i) produced, emitted or released from the Project (ii) tested by ENGINEER under this Agreement, or (iii) used or incorporated by ENGINEER in the Services; or (b) operation or management of the Project. CITY also agrees to require its construction contractor, if any, to include ENGINEER as an indemnitee under any indemnification obligation to CITY.

11. **LIMITATIONS OF LIABILITY.** No employee or agent of ENGINEER shall have individual liability to CITY.

CITY agrees that, to the fullest extent permitted by law, ENGINEER's total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER's negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by ENGINEER under this Agreement. If CITY desires a limit of liability in excess of that provided above, CITY and ENGINEER shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CITY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

12. **ACCESS.** CITY shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

13. **REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at the CITY's risk. CITY agrees to defend, indemnify, and hold harmless ENGINEER from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

14. **AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

15. **ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

16. **STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

17. **PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

18. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

19. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY's contractors, if any.

20. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

21. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

May 18, 1993

MEMORANDUM

D-95-03-18

TO: Common Council Members

FROM: Patrick W. Callahan, Manager WPC Engineering

95 MAR 24 PM 2:42

DATE: March 24, 1995

RE: Introduction of an Ordinance certifying and approving the need for the services of a consultant to provide professional engineering services to develop, implement, and manage a Combined Sewer Overflow Program

On February 20, 1995 the Fort Wayne Water Pollution Control Utility received an administrative order from the United States Environmental Protection Agency, Region 5. The purpose of this order was to force Fort Wayne to accelerate its CSO improvements program. Implementation schedules for CSO improvements are usually established in NPDES permits issued by the Indiana Department of Environmental Management. Unfortunately, IDEM and USEPA Region 5 disagree how this should be done.

EPA's order requires Fort Wayne to develop and implement a CSO Operational Plan. If the Utility complies with the order as written it will incur the costs of inefficiency and accelerate spending on capital projects. If the Utility does nothing USEPA Region 5 will forward the order to the justice department for enforcement. The utility is currently negotiating the terms of the order to allow the orderly development and implementation of the improvements. Once schedules are agreed upon, compliance with those schedules is absolutely necessary to avoid penalties.

Even though the Utility had begun work on the CSO Operational Plan before the receipt of EPA's Order, the additional work required to negotiate with the EPA and the importance of meeting schedule deadlines make it necessary to have a qualified person dedicated to overseeing this program. The utility does not have anybody available to fill such a position and therefore have hired RUST Environmental and Infrastructure to assist with these duties.

RUST was selected from among five consultants currently working for the City. RUST has proposed to divide the required work into three phases, Phase I - Program definition, Phase II - Plan preparation, and Phase III - Long Term Implementation. Their current contract covers Phase I and is not to exceed \$95,500.00. It is anticipated that RUST will be asked to be involved in part of Phase II yet this year and that would bring their total contract to more than \$100,000.00 for the year. The cost of this contract will be paid from Sewer Utility Revenues.

TITLE OF ORDINANCE: Professional Services with Rust Environmental & Infrastructure for Combined Sewer Overflow Abatement Program, Program Management, Development, and Implementation.

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Professional Services with Rust Environmental & Infrastructure for Combined Sewer Overflow Abatement Program, Program Management, Development, and Implementation.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$95,500 (Sewer Utility)

ASSIGNED TO COMMITTEE: